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CENTRAL FAX CENTER****MAR 20 2007****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Application No. : 10/774,768
Inventor(s) : Gregory Ashton, et al.
Filed : February 9, 2004
Art Unit : 3761
Examiner : Laura C. Hill
Docket No. : 9490
Confirmation No. : 9760
Customer No. : 27752
Title : Absorbent Article Comprising a Flap Handle that Aids in
the Application of said Absorbent Article

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

This Brief is filed pursuant to the appeal from a final Office Action mailed on September 29, 2006. A timely Notice of Appeal was filed on December 20, 2006. This Brief is being filed with a petition of a one month extension of time, making this Brief due on or before Tuesday, March 20, 2007.

REAL PARTY IN INTEREST

The real party in interest is The Procter & Gamble Company of Cincinnati, Ohio.

RELATED APPEALS AND INTERFERENCES

There are no known related appeals, interferences, or judicial proceedings.

STATUS OF CLAIMS

Claims 1-3, 5, 6, and 21-33 are rejected, and claims 4, and 7-20 are cancelled.

Claims 1-3, 5, 6, and 21-33 are appealed.

A complete copy of the appealed claims is set forth in the Claims Appendix attached herein.

Appl. No. 10/774,768
Docket No. 9490
Appeal Brief dated March 20, 2007
Reply to Office Action mailed on September 29, 2006
Customer No. 27752

RECEIVED
CENTRAL FAX CENTER

MAR 20 2007

STATUS OF AMENDMENTS

No amendment was filed subsequent to the final Office action dated September 29, 2006.

SUMMARY OF CLAIMED SUBJECT MATTER

Claim 1 relates to an absorbent article 20 having a front region 26, a back region 28, a belt zone 38 extending circumferentially about the absorbent article 20, a wearer-facing surface, and a garment-facing surface. (See *inter alia* page 5, ll. 28-34; page 6, ll. 28-32; and Figs. 1a-1b). The absorbent article 20 comprises: a chassis 41 and at least one sidewall 33 adjacently disposed to the chassis 41 and connecting the front region 26 to the back region 28 thereby forming a leg opening 34 and a waist edge 15, 16, the sidewall 33 comprises an ear or a panel. (See *inter alia* page 5, ll. 28 through page 6, ll. 28; and Figs. 1a-1b). The absorbent article 20 also comprises at least one handle for assisting in the application of the article onto a wearer, wherein the handle is a flap 200 comprising a stratum 250, wherein the flap forms a gap between the stratum 250 and the chassis 41 or sidewall 33. The flap 200 is joined to the garment-facing surface of the article 20 by opposing longitudinal welds 260 disposed proximate to opposing distal longitudinal edges of the flap 200, and the handle is disposed adjacent to either the chassis 41 or sidewall 33. In addition, the absorbent article 20 is a pull-on garment. (See *inter alia* page 12, ll. 34 through page 13, ll. 28; and Figs. 2a-2d).

Claim 33 relates to a kit toilet training an infant comprising: a plurality of training pants 20; a thermoplastic film covering the plurality of training pants; and an instruction to a caregiver for transitioning the infant to proper toilet use. (See *inter alia* page 21, ll. 4 through page 22, ll. 31). The plurality of training pants 20 have a front region 26, a back region 28, a belt zone 38 extending circumferentially about the absorbent article 20, a wearer-facing surface, and a garment-facing surface. (See *inter alia* page 5, ll. 28-34; page 6, ll. 28-32; and Figs. 1a-1b). Each of the training pants 20 comprise: a chassis 41; at least one sidewall 33 adjacently disposed to the chassis 41 and connecting the front region 26 to the back region 28 thereby forming a leg opening 34 and a waist edge 15, 16; the sidewall comprising an ear or a panel, and at least one handle for assisting in the

RECEIVED
CENTRAL FAX CENTER

MAR 20 2007

Appl. No. 10/774,768
Docket No. 9490
Appeal Brief dated March 20, 2007
Reply to Office Action mailed on September 29, 2006
Customer No. 27752

application of the training pant onto a wearer. (See *inter alia* page 5, ll. 28 through page 6, ll. 28; and Figs. 1a-1b). The handle is a flap 200 comprising a stratum 250, wherein the flap forms a gap between the stratum and the chassis 41 or sidewall 33, and the handle is disposed adjacent to the sidewall. The flap 200 has a lateral width greater than the longitudinal length, and the lateral width is substantially parallel to the waist edge. (See *inter alia* page 12, ll. 34 through page 13, ll. 28; and Figs. 2a-2d).

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Whether claims 1-3, 5, 6, and 23-30 are unpatentable under 35 U.S.C. § 102(b) over U.S. Patent Publication No. 2002/0091368 in the name of LaVon et al. (hereinafter "LaVon").

Whether claims 1, 6, 27, 29, and 30 are unpatentable under 35 U.S.C. § 102(b) over Japanese Patent Publication No. JP11-104180A2 in the name of Yoshikazu (hereinafter "Yoshikazu").

Whether claims 21, 22, and 31-33 are unpatentable under 35 U.S.C. § 103(a) over LaVon.

ARGUMENTS

Rejection of Claims 1-3, 5, 6, and 23-30 under 35 U.S.C. § 102(b) over LaVon

Claims 1-3, 5, 6, and 23-30 have been rejected 35 U.S.C. § 102(b) over LaVon. A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. (See MPEP § 2131, citing Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)). There is at least one aspect of the invention defined by independent claim 1 not taught or suggested by LaVon.

Independent claim 1 recites an absorbent article comprising, among other elements, "at least one handle for assisting in the application of article onto a wearer, wherein the handle is a flap." LaVon, on the other hand, is directed to an absorbent core designed to move fluid from the crotch region to the front and/or rear ends of the article.

Appl. No. 10/774,768
Docket No. 9490
Appeal Brief dated March 20, 2007
Reply to Office Action mailed on September 29, 2006
Customer No. 27752

(See LaVon, Abstract). More particularly, LaVon discloses an absorbent core that may comprise a non-removable absorbent core component in the crotch region and removable absorbent core components in the front or rear regions of the article. (See LaVon, Abstract). However, LaVon does not teach or suggest at least one handle and flap as recited in independent claim 1.

In support of the rejection of claim 1, the final Office action of September 29, 2006 incorrectly characterizes the absorbent article shown in Figures 7 and 8 of LaVon as having the at least one handle and flap recited in claim 1. In particular, the final Office action incorrectly equates the flap 620 shown in Figure 7 of LaVon with the flap recited in claim 1. (See Office action of September 29, 2006, pages 2, 4, and 5). As described in LaVon, Figure 7 shows an absorbent article 600 having an opening 610 through which a back panel 430 may be removed or replaced. (See LaVon, Paragraph [0115], and Figure 7). In addition, a flap 620 may be secured over the opening 610 by suitable fasteners such as fasteners 625. (See LaVon, Paragraph [0115], and Figure 7). As such, the flap 620 shown in Figure 7 of LaVon is a cover for an opening in the absorbent article. Figure 8 of LaVon fails to show the flap 620 cited by the Office action, and instead, shows a backsheet pocket 660 that may be affixed to the absorbent article 600. (See LaVon, Paragraph [0116], and Figure 8). Therefore, it is respectfully submitted that LaVon does not teach or suggest "at least one handle for assisting in the application of article onto a wearer, wherein the handle is a flap," as recited in claim 1.

Claim 1 also recites that the "flap is joined to the garment-facing surface of the article by opposing longitudinal welds." In addition to mischaracterizing the flap 620 of LaVon as the flap of claim 1, the Office action mistakenly equates the fasteners 625 shown in Figure 7 of LaVon with the "welds" recited in claim 1. (See Office action of September 29, 2006, pages 2, 4, and 5). The fasteners 625 of LaVon appear to be hook-and-loop type fasteners. (See LaVon, Figure 7). During examination, the pending claims must be given their broadest reasonable interpretation consistent with the specification. (See MPEP § 2111). However, the specification of the present application does not equate hook-and-loop fasteners with welds. In one example, the specification states that "the flap 200 may be welded by an adhesive, heat bonds, pressure bonds,

Appl. No. 10/774,768
Docket No. 9490
Appeal Brief dated March 20, 2007
Reply to Office Action mailed on September 29, 2006
Customer No. 27752

ultrasonic bonds, dynamic mechanical bonds, or combinations thereof." (See present application, page 14, ll. 13-14). In another example, the specification draws a distinction between welds and hook-and-loop fasteners. In particular, the specification discusses welding techniques on the seams 32 of a diaper as including "sonic sealing, heat sealing, pressure bonding, adhesive or cohesive bonding, sewing, and autogeneous bonding." (See present application, page 6, ll. 18-20). Then, in the same paragraph, the specification discusses an alternative embodiment of seams 32 as including "a resealable fastener, such as but not limited to, hook and loop fasteners, buttons, zippers, tab and slot, adhesives, co-adhesives and the like." (See present application, page 6, ll. 23-25). As such, it is respectfully submitted that the Office action has mischaracterized the fasteners 625 of LaVon as the welds recited in claim 1.

Accordingly, LaVon does not teach or suggest all the claim elements recited in claim 1. Thus, it is respectfully submitted that, for at least the reasons discussed above, claim 1 is patentable under 35 U.S.C. § 102(b) over LaVon. Claims 2, 3, 5, 6, and 23-30 depend from and include all the limitations of claim 1. As such, for at least the same reasons discussed above with reference to claim 1, claims 2, 3, 5, 6, and 23-30 are also patentable under 35 U.S.C. § 102(b) over LaVon.

Additional reasons in support of the patentability of dependent claims 5, 6, 24-26, and 28 under 35 U.S.C. § 102(b) over LaVon are provided below.

With regard to claims 5-6 and 25-26, the final Office action of September 29, 2006, states, "LaVon discloses the flap stratum is a portion of the belt zone that has been folded away from the wearer-facing surface of the article at hinge points [hinge point is disposed at a location where perimeter 710 meets adhesive/lateral weld 720] (page 14, paragraph 0123, lines 6-8 and figure 10) and wherein the flap comprises a multiple construction wherein the stratum is discrete (figure 10)." (See Office action of September 29, 2006, page 5). It is respectfully submitted that the Office action has failed to clearly describe how LaVon teaches each and every element of claims 5-6 and 25-26. As discussed above, when rejecting claim 1 (upon which claims 5-6 and 25-26 depend), the Office action relies on the embodiment in Figure 7 of LaVon, which includes flap 620. In the rejection of claims 5-6 and 25-26, however, the Office action relies upon the

Appl. No. 10/774,768
Docket No. 9490
Appeal Brief dated March 20, 2007
Reply to Office Action mailed on September 29, 2006
Customer No. 27752

embodiment in Figure 10, which does not include the flap 620 shown in Figure 7. As such, it is not clear what structure in Figure 10 the Office action is construing to be the flap recited in the rejected claims. Furthermore, it is not clear where the longitudinal welds recited in claim 1 are taught or suggested in Figure 10 and the passage on page 14, paragraph [0123].

The Office action also refers to Figure 9 and paragraph [0117] of LaVon in support of the rejection of claim 24. In particular, the Office action states, "LaVon discloses blocking layers 670 forms (sic) cut through a portion of the stratum (figure 9 and page 13, paragraph 0117)." (See Office action of September 29, 2006, page 5). Again, it is unclear what the Office action considers as the flap in Figure 9. Claim 24 depends from claim 5, which in turn, is depends from claim 1. As discussed above, the Office action mischaracterizes the flap 620 shown in Figure 7 as the flap recited in claim 1. However, the Office action refers to Figure 9, which is structurally different from Figure 7, in support of the rejection of claim 24. Specifically, Figure 9 does not include a flap 620, as shown in Figure 7. As such, the Office action has failed to clearly describe how LaVon teaches each and every element of claim 24.

With regard to claim 28, the final Office action states, the "handle 620 of LaVon spans the width of the sidewall since the flap extends longitudinally across layers that form the longitudinal outer edges of the flap interpreted to be the sidewall (see also figure 7)." (See Office action of September 29, 2006, page 3). As discussed above, the Office action mischaracterizes the flap 620 of LaVon as the handle recited in claim 1. In addition, the flap 620 of LaVon in Figure 7 appears to be laterally centered on the absorbent article 600, as opposed to spanning any portion of the absorbent article that could be construed as a sidewall.

Therefore, for at least the reasons above, it is believed claims 1-3, 5, 6, and 23-30 are in form for allowance and such indication is respectfully requested.

Rejection of Claims 1, 6, 27, 29, and 30 under 35 U.S.C. § 102(b) over Yoshikazu

Claims 1, 6, 27, 29, and 30 have been rejected 35 U.S.C. § 102(b) over Yoshikazu. A claim is anticipated only if each and every element as set forth in the claim

Appl. No. 10/774,768
Docket No. 9490
Appeal Brief dated March 20, 2007
Reply to Office Action mailed on September 29, 2006
Customer No. 27752

is found, either expressly or inherently described, in a single prior art reference. (*See* MPEP § 2131, citing Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)). There is at least one aspect of the invention defined by claim 1 not taught or suggested by Yoshikazu.

In particular, Independent claim 1 recites an absorbent article comprising, among other elements, "at least one handle for assisting in the application of article onto a wearer, wherein the handle is a flap" and "wherein said flap is joined to the garment-facing surface of the article by opposing longitudinal welds." Yoshikazu discloses a diaper having "several fingertip engaging parts that are arranged in a row separated and in parallel." (*See* Yoshikazu, Paragraph [0006]; and Figure 1). However, Yoshikazu does not teach or suggest a flap joined to the diaper by opposing longitudinal welds, as recited in claim 1. Instead, Yoshikazu discloses fingertip engaging parts (14) that are formed by overlapping a second outer face sheet (3b) having openings therein (i.e. window parts (16)) over a pleat (15) formed in a first outer face sheet (3a). More particularly, Yoshikazu discloses a diaper that is constructed of a lamination (1) consisting of an inner face sheet (2), an outer face sheet (3), and a liquid absorbing core (4) between. (*See* Yoshikazu, Paragraph [0009]; and Figure 1). The outer face sheet (3) consists of a second outer face sheet (3b) that overlaps the outside of a first outer face sheet (3a). (*See* Yoshikazu, Paragraph [0010]; and Figures 1-2). The first outer face sheet (3a) is folded to form a folded part (pleat) (15). (*See* Yoshikazu, Paragraph [0010]; and Figures 1-2). The second outer face sheet (3b) includes openings referred to as window parts (16) sized such that at least one adult fingertip can be inserted therein. (*See* Yoshikazu, Paragraph [0010]; and Figures 1-2). The fingertip engaging parts (14) are formed by several window parts (16) adjacent the folded part (pleat) (15). (*See* Yoshikazu, Paragraph [0010]; and Figures 1-2). As such, the fingertip parts of Yoshikazu are not flaps that are joined the diaper with longitudinal welds as recited in claim 1. Accordingly, Yoshikazu does not teach or suggest all the claim elements recited in claim 1.

In the final Office action, it is asserted that Yoshikazu discloses a flap joined to the garment facing-surface by adhesive welding means. (*See* Office action of September

Appl. No. 10/774,768
Docket No. 9490
Appeal Brief dated March 20, 2007
Reply to Office Action mailed on September 29, 2006
Customer No. 27752

29, 2006, page 6). However, the Office action mischaracterizes the heat fusion-means along the side edges 11 of the diaper in Yoshikazu as the longitudinal welds recited in claim 1. (See Office action of September 29, 2006, page 3). Instead of joining a flap to the diaper, the heat fusion-means of Yoshikazu cited in the Office action seal the front and back waist portions of the diaper together. (See Yoshikazu, Paragraph [0009]; and Figure 1).

Thus, it is respectfully submitted that, for at least the reasons discussed above, claim 1 is patentable under 35 U.S.C. § 102(b) over Yoshikazu. Claims 6, 27, 29, and 30 depend from and include all the limitations of claim 1. As such, for at least the same reasons discussed above with reference to claim 1, claims 6, 27, 29, and 30 are also patentable under 35 U.S.C. § 102(b) over Yoshikazu.

Therefore, for at least the reasons above, it is believed claims 1, 6, 27, 29, and 30 are in form for allowance and such indication is respectfully requested.

Rejection of Claims 21, 22, and 31-33 under 35 U.S.C. § 103(a) over LaVon

Claims 21, 22, and 31-33 have been rejected 35 U.S.C. § 103(a) over LaVon. In order to establish a prima facie case of obviousness, three basic requirements must be met. (See MPEP § 2143). First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. *Id.* Second, there must be a reasonable expectation of success. *Id.* Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *Id.* It is respectfully submitted that the Office action does not establish a prima facie case of obviousness, because the combination of LaVon does not teach or suggest all the claim elements of independent claims 1 and 33.

Independent claim 1 recites an absorbent article comprising, among other elements, "at least one handle for assisting in the application of the article onto a wearer, wherein the handle is a flap." Independent claim also recites a training pant comprising, among other elements, "at least one handle for assisting in the application of the training pant onto a wearer, wherein the handle is a flap." As discussed in detail above with

Appl. No. 10/774,768
Docket No. 9490
Appeal Brief dated March 20, 2007
Reply to Office Action mailed on September 29, 2006
Customer No. 27752

regard to the rejection of claim 1 under 35 U.S.C. § 102(b), LaVon does not teach or suggest at least one handle and flap as recited in independent claim 1, and therefore, LaVon also does not teach or suggest at least one handle and flap as recited in independent claim 33.

As discussed above, the final Office action of September 29, 2006 incorrectly characterizes an absorbent article shown in Figures 7 and 8 of LaVon by incorrectly equating the flap 620 shown in Figure 7 of LaVon with the flap recited in claim 1. (See Office action of September 29, 2006, pages 2, 4, and 5). As described in LaVon, Figure 7 shows an absorbent article 600 having an opening 610 through which a back panel 430 may be removed or replaced. (See LaVon, Paragraph [0115], and Figure 7). In addition, a flap 620 may be secured over the opening 610 by suitable fasteners such as fasteners 625. (See LaVon, Paragraph [0115], and Figure 7). As such, the flap 620 shown in Figure 7 of LaVon is a cover for an opening in the absorbent article. Figure 8 of LaVon fails to show the flap 620 cited by the Office action, and instead, shows a backsheet pocket 660 that may be affixed to the absorbent article 600. (See LaVon, Paragraph [0116], and Figure 8). Accordingly, LaVon does not teach or suggest all the claim elements recited in claims 1 and 33.

Thus, it is respectfully submitted that, for at least the reasons discussed above, claims 1 and 33 are patentable under 35 U.S.C. § 103(a) over LaVon. Claims 21, 22, 31, and 32 depend from and include all the limitations of claim 1. As such, for at least the same reasons discussed above with reference to claim 1, claims 21, 22, 31, and 32 are also patentable under 35 U.S.C. § 103(a) over LaVon.

Therefore, for at least the reasons above, it is believed claims 21, 22, and 31-33 are in form for allowance and such indication is respectfully requested.

SUMMARY

In view of all of the above, it is respectfully submitted that the Board reverse the rejections with respect to claims 1-3, 5, 6, and 21-33.

Appl. No. 10/774,768
Docket No. 9490
Appeal Brief dated March 20, 2007
Reply to Office Action mailed on September 29, 2006
Customer No. 27752

Respectfully submitted,
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Customer No. 27752

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Revised 04/26/2006

Appl. No. 10/774,768
Docket No. 9490
Appeal Brief dated March 20, 2007
Reply to Office Action mailed on September 29, 2006
Customer No. 27752

RECEIVED
CENTRAL FAX CENTER

MAR 20 2007

CLAIMS APPENDIX

1. (Rejected) An absorbent article having a front region, a back region, a belt zone extending circumferentially about the absorbent article, a wearer-facing surface, and a garment-facing surface; said absorbent article comprising:
 - a) a chassis;
 - b) at least one sidewall adjacently disposed to the chassis and connecting the front region to the back region thereby forming a leg opening and a waist edge; said sidewall comprising an ear or a panel, and
 - c) at least one handle for assisting in the application of the article onto a wearer; wherein the handle is a flap comprising a stratum, wherein the flap forms a gap between the stratum and the chassis or sidewall, wherein said flap is joined to the garment-facing surface of the article by opposing longitudinal welds disposed proximate to opposing distal longitudinal edges of the flap, wherein the handle is disposed adjacent to either the chassis or sidewall and wherein the absorbent article is a pull-on garment.
2. (Rejected) The absorbent article of claim 1 wherein the chassis further comprises a liquid pervious topsheet, a liquid impervious backsheet joined with the topsheet, and an absorbent core interposed between the topsheet and backsheet.
3. (Rejected) The absorbent article of claim 2 wherein the backsheet further comprises at least a nonwoven outer cover.

RECEIVED
CENTRAL FAX CENTER

MAR 20 2007

Appl. No. 10/774,768
Docket No. 9490
Appeal Brief dated March 20, 2007
Reply to Office Action mailed on September 29, 2006
Customer No. 27752

CLAIMS APPENDIX

4. (Cancelled)
5. (Rejected) The absorbent article of claim 1 wherein the flap comprises a unitary construction; wherein said stratum is a portion of the belt zone that has been folded away from the wearer-facing surface of the article at a hinge point.
6. (Rejected) The absorbent article of claim 1 wherein the flap comprises a multiple construction; wherein said stratum is discrete.
- 7-20. (Cancelled)
21. (Rejected) A kit for toilet training an infant comprising:
- a) the article of claim 1 in the form of a training pant and
 - b) an instruction to a caregiver for transitioning the infant to proper toilet use.
22. (Rejected) A kit comprising more than one absorbent article of claim 1 wherein the article is positioned within said kit such that the handle is readily accessible.
23. (Rejected) The absorbent article of Claim 1 wherein said flap has a lateral width and a longitudinal length, wherein said lateral width is greater than the longitudinal length.

RECEIVED
CENTRAL FAX CENTER:

MAR 20 2007

Appl. No. 10/774,768
Docket No. 9490
Appeal Brief dated March 20, 2007
Reply to Office Action mailed on September 29, 2006
Customer No. 27752

CLAIMS APPENDIX

24. (Rejected) The absorbent article of Claim 5 wherein said stratum comprises a cut through a portion of the stratum, wherein said cut is disposed along the waist edge.
25. (Rejected) The absorbent article of Claim 5 wherein said stratum is joined to the garment-facing surface of the article by a lateral weld disposed substantially laterally and in proximity to the waist edge.
26. (Rejected) The absorbent article of Claim 6 wherein said stratum is joined to the garment-facing surface of the article by a lateral weld disposed substantially laterally and in proximity to the waist edge.
27. (Rejected) The absorbent article of Claim 1 wherein the handle is disposed adjacent to the sidewall.
28. (Rejected) The absorbent article of Claim 27 wherein the sidewall has a width and wherein the handle laterally spans said width of the sidewall.
29. (Rejected) The absorbent article of Claim 1 wherein the sidewall comprises a single car or panel.

RECEIVED
CENTRAL FAX CENTER

MAR 20 2007

Appl. No. 10/774,768
Docket No. 9490
Appeal Brief dated March 20, 2007
Reply to Office Action mailed on September 29, 2006
Customer No. 27752

CLAIMS APPENDIX

30. (Rejected) The absorbent article of Claim 1 wherein the sidewall comprises more than one ear or panel, wherein said ears or panels are connected to each other by a welding means selected from a group consisting of sonic sealing, heat sealing, pressure bonding, adhesive or cohesive bonding, sewing, and autogeneous bonding.
31. (Rejected) The kit of Claim 21 wherein the instruction to the caregiver for transitioning the infant to proper toilet use includes use of the handle.
32. (Rejected) The kit of Claim 21 wherein the instruction to the caregiver for transitioning the infant to proper toilet use includes description of a behavior modification.
33. (Rejected) A kit toilet training an infant comprising:
- a) a plurality of training pants having a front region, a back region, a belt zone extending circumferentially about the absorbent article, a wearer-facing surface, and a garment-facing surface; each said training pant comprising:
 - i) a chassis;
 - ii) at least one sidewall adjacently disposed to the chassis and connecting the front region to the back region thereby forming a leg opening and a waist edge; said sidewall comprising an ear or a panel, and

Appl. No. 10/774,768
Docket No. 9490
Appeal Brief dated March 20, 2007
Reply to Office Action mailed on September 29, 2006
Customer No. 27752

RECEIVED
CENTRAL FAX CENTER

MAR 20 2007

CLAIMS APPENDIX

- iii) at least one handle for assisting in the application of the training pant onto a wearer; wherein the handle is a flap comprising a stratum, wherein the flap forms a gap between the stratum and the chassis or sidewall, said flap having a lateral width greater than the longitudinal length, wherein the lateral width is substantially parallel to the waist edge, wherein the handle is disposed adjacent to the sidewall;
- b) a thermoplastic film covering the plurality of training pants; and
- c) an instruction to a caregiver for transitioning the infant to proper toilet use.

Appl. No. 10/774,768
Docket No. 9490
Appeal Brief dated March 20, 2007
Reply to Office Action mailed on September 29, 2006
Customer No. 27752

EVIDENCE APPENDIX

NONE

Appl. No. 10/774,768
Docket No. 9490
Appeal Brief dated March 20, 2007
Reply to Office Action mailed on September 29, 2006
Customer No. 27752

RELATED PROCEEDINGS APPENDIX

NONE

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